

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.3323/Del/2023
[Assessment Year : 2018-19]**

Smt. Nidhi Rani 1361, Sector-25, Part-II Panipat, Haryana-132103 PAN-ARRPR9400P	vs	ITO Ward-1, Panipat
APPELLANT		RESPONDENT
Appellant by	Dr. Rakesh Gupta, Adv. Shri Somil Agarwal, Adv. & Shri Saksham Agarwal, CA	
Respondent by	Shri Shyam Manohar Singh, Sr.DR	
Date of Hearing	24.09.2025	
Date of Pronouncement	19.12.2025	

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by the assessee against the order dated 30.10.2023 of Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld. CIT(A)”] in Appeal No. NFAC/2017-18/10008516 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of assessment order dated 23.03.2021 passed u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act pertaining to Assessment Year 2018-19.

2. Brief facts of the case are that the assessee is an individual and filed her return of income on 30.10.2018, declaring total income of INR 11,81,990/-. The case of the assessee was selected for scrutiny under CASS and the statutory notices u/s 143(2) was issued followed

by questionnaires coupled with notices u/s 142(1) of the Act issued from time to time. The assessee made compliances and filed the requisite details. After considering the submissions made by the assessee, AO passed the order and made the addition of INR 1,57,59,722/- u/s 68 of the Act being the amount of loan received from One, M/s Tejas Handloom, a proprietorship firm of HUF of family of the assessee whose Karta is her husband. Besides this, AO estimated the Gross Profit of the assessee and applied GP rate of 1.22% on the gross turnover, resulting into further addition of INR 33,79,725/-. Thus, total income of the assessee was assessed at INR 5,07,38,963/-.

3. Against the said order, assessee preferred an appeal before Ld. CIT(A) who vide impugned order dated 30.10.2023 dismissed the appeal of the assessee, therefore, assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.1,57,59,722/- on account of unsecured loan received from M/s Tejas Handloom u/s 68 and that too by recording incorrect facts and findings and without providing the opportunity of being heard and without observing the principles of natural justice.*
2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.1,57,59,722/- on account of unsecured loan received from M/s Tejas Handloom u/s 68, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O in making addition of Rs.3,37,97,251/- on account of estimation of profit and has further erred in rejecting the books of accounts of the assessee and impugned order has been passed by recording incorrect facts and findings and without observing the principles of natural justice.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. A.O in making addition of Rs.3,37,97,251/- on account of estimation of profit, is bad in law and against the facts and circumstances of the case.*
5. *That having regard to the facts and circumstances of the case, the assumption of jurisdiction is bad in law, illegal and void ab-initio inter alia for the reason that the impugned assessment order has been passed without following the provisions of section 143(3A) & 143(3B) of Income Tax Act, 1961.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.*
7. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

4. **Ground of appeal Nos. 1 & 2** raised by the assessee are in relation to the addition of INR 1,57,97,722/- made towards unsecured loans taken from Tejas Handloom u/s 68 of the Act by holding the same as unexplained.

5. Before us, Ld. AR submits that M/s Tejas Handloom is a proprietorship firm of M/s Ashish Mittal HUF who's Karta is assessee's husband. Ld. AR submits that before AO, assessee submits the confirmed copy of ledger account, copy of income tax return and other assessment particulars of M/s Tejas Handloom. Ld. AR submits that during the year under appeal, total amount received was of INR 1,57,59,722/- and together with the opening balance of INR 1,13,42,888/-, total outstanding loan was repaid and there was NIL balance at the end of the previous year. Ld. AR submits that the allegation of the AO that M/s Tejas Handloom has no creditworthiness to grant loan of this amount to the assessee is contrary to the fact> he submits that AO as well as Ld. CIT(A) has

failed to appreciate that assessee is making regular transactions with M/s Tejas Handloom, where funds were received as well repaid on regular interval and thus the immediate source of funds is the repayment made by the assessee.

6. Ld. AR submits that for examining the creditworthiness, the AO should consider the peak credit balance. For this, assessee filed peak working chart wherein all the receipts and payments related to the year under appeal were taken and peak of INR 20,30,000/- (credit) is worked out on 15.07.2017. Ld.AR submits that such peak balance was submitted as an alternate to the AO to establish that M/s Tejas Handloom gave the funds to the assessee out of the funds repaid by her and the highest balance (peak balance) i.e. maximum funds involved by M/s Tejas Handloom was of INR 24,30,000/- during the year for which its creditworthiness was proved. Ld. AR submits that AO has rejected this theory solely for the reason that opening balance has not been added to the peak balance and failed to appreciate the fact that position of funds in the hands of M/s Tejas Handloom needs to be examined for the previous year only. He further submits that in any of the previous year, the AO has not doubted the loan received by the assessee, therefore, opening balance was not taken into consideration in the peak balance.

7. Ld. AR further submits that looking to the financial statements of M/s Tejas Handloom and its bank statement as filed, it could be seen that M/s Tejas Handloom has sufficient funds available in its hand whenever funds were given to the assessee. Ld. AR further

submits that entire amount was repaid during the previous year itself which has not been doubted by the AO thus sources to such extent should stand explained. He, therefore, submits that the assessee has been able to establish the creditworthiness of M/s Tejas Handloom and thus, no addition is required to be made.

8. Ld. AR for the assessee further submits that AO has doubted the 'source of source' in the hands of the lender however, examination of the 'source of source' has been inserted by Finance Act, 2022 and made applicable from AY 2023-24 and onwards. Therefore, burden on the assessee to prove the source of source of the loan creditor is not applicable. Ld. AR further submits that in the present case, if the AO has any doubts in his mind with regard to the creditworthiness of the loan creditor, summons u/s 131/133(6) of the Act could be issued since particulars of the lender were filed. However, AO has failed to make any enquiry by issue summon u/s 133(6) of the Act nor any filed enquiry was made by deputing ward inspector and made the addition of unsecured loan received by holding the same as unexplained money. For this, he placed reliance on the judgment of Hon'ble Supreme Court in the case of ***Orissa Corporation reported in [1986] 159 ITR 78 (SC)***. He therefore, requested that the addition made deserves to be deleted. The ld. AR for the assessee also placed reliance on the following judgments:-

- *PCIT vs. Ojas Tarmake (P.) Ltd., (2023) 156 taxmann.com 75, High Court of Gujarat.*
- *PCIT vs. Neotech Education Foundation, (2023) 292 Taxman 199, High Court of Gujarat.*

- *PCIT vs. Ambe Tradecorp (P.) Ltd.*, (2023) 290 Taxman 471, High Court of Gujarat.
- *PCIT vs. Overtop Marketing (P.) Ltd.*, [2023] 148 taxmann.com 94, High Court of Calcutta.
- *Pr. CIT vs. Hi-Tech Residency (P.) Ltd.*, (2018) 257 Taxman 390 (Del).
- *CIT vs. Real Time Marketing Pvt. Ltd.*, (2008) 306 ITR 0035 (Del).
- *CIT vs. Jai Kumar Bakliwal*, (2014) 366 ITR 0217 (Raj).
- *Aravali Trading Co. vs. ITO*, (2010) 187 Taxman 0338 (Raj).
- *CIT vs. Metachem Industries*, 245 ITR 160, High Court of Madhya Pradesh.
- *Nemi Chand Kothari vs. CIT & Anr.*, (2003) 264 ITR 0254 (Gau).
- *CIT vs. Shri Ram Narain Goel*, (1997) 224 ITR 0180 (P&H).
- *ACIT vs Dayal Steel (P) Ltd. in ITA 9121/Del./2019*, date of order 11-01-2024. Delhi ITAT.
- *AO vs Asit Surendrabhai Shah and ors. in ITA 945/Ahd./2018*, Date of order 02-08-2023. Ahmedabad ITAT.
- *Ganesh Hanpat Alim vs ITO in ITA 40/SRT/2022*, Date of order 08-05-2023. Surat ITAT.

9. On the other hand, Ld. Sr. DR vehemently supported the orders of the lower authorities and submits that it was the claim of the assessee that there is a regular business transaction between two parties however, from the perusal of the ledger account, it could be seen that except transfer of funds, there is no business transactions between them nor any evidences were filed to establish that transactions were under business exigencies. Ld. Sr. DR further submits that merely filing the bank statements and copy of ITR, it is not absolved the assessee from the onus to establish the creditworthiness of the lender. He thus prayed that the addition made deserves to be uphold. Regarding peak credit theory, Ld. Sr. DR submits that working of the peak credit submitted by the assessee suffers deficiency opening balance was not included in the

same, therefore, the peak balance of INR 24,30,000/- is incorrect. He prayed accordingly.

10. Heard the contentions of both parties and perused the material available on record. In the instant case, the sole allegation of the AO is regarding failure on the part of the assessee to prove the creditworthiness/capacity of lender M/s Tejas Handloom to provide funds to the assessee. The AO observed that M/s Tejas Handloom shown income of INR 10,67,933/- and its capital was only INR 19,61,924/- therefore, sufficient funds were not available with it to extend loan to the tune of INR 1,57,59,722/- to the assessee during the year under appeal.

11. The provisions as contained in u/s 68 of the Act reads as under:-

Cash credits.

68. “Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—

- (a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share

premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided also that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

12. As per section 68, onus is on the assessee to establish the three ingredients i.e. (i) identity of the creditors; (ii) genuineness of the transactions; and (iii) creditworthiness of the lender.

13. In the instant case, assessee had filed copy of Aadhar of Karta of lender HUF, its PAN and ITR thus, the identity has been established which was also not doubted. Since all the transactions were carried out through banking channel, therefore, genuineness also established.

14. Now coming to the creditworthiness of the lender, from the perusal of ledger account of lender M/s Tejas Handloom as available in Paper Book at page 247 to 249 filed before us, it is seen that there was an opening balance (credit) of INR 1,13,42,888/- and thereafter, there are entries of debit and credit i.e. receipt and payment on regular basis. During the course of assessment proceedings, assessee prepared peak balance chart which is available at pages 314 to 315 of the Paper Book, wherein funds received from M/s Tejas Handloom

were taken as “source” and funds repaid were taken as “application” and daily peak balance is worked to find out the maximum funds landed to the assessee at any time during the previous year relevant to assessment year under appeal. As per the said working peak balance arrived at INR 24,30,000/- on 15.07.2017. This balance was computed out after considering the funds received and repaid to M/s Tejas Handloom, therefore, at any point of time, maximum fresh funds applied by M/s Tejas Handloom as loan to assessee during the year under appeal was of INR 24,30,000/- which looking to the capital balance and income declared by M/s Tejas Handloom could not be hold as excessive or unreasonable. It is further seen that Tejas Handloom has declared turnover of INR 3.98 crores meaning thereby, there were sufficient and reasonable amount of transactions carried out in its bank account which is also evident from the copy of bank statements produced before the lower authorities and as filed in pages 308 to 313 of the paper book. From the perusal of the same, it is further seen that there were sufficient balances available in the bank account of M/s Tejas Handloom as and when funds were transferred to the assessee. Therefore, the capacity to grant fresh loan to the assessee during the year under appeal by M/s Tejas Handloom cannot be doubted.

15. It is also relevant to state that amendment in section 68 was made vide Finance Act, 2022 wherein second proviso was inserted, so as to provide that the nature and source of any sum, whether in the form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source

of funds is also explained in the hands of the creditor or entry provider. This amendment has taken effect from 1st April, 2023 and accordingly applies in relation to the assessment year 2023-24 and all subsequent assessment years. The year before us is AY 2018-19 thus this amendment is not applicable in the present case.

16. The coordinate Bench of Delhi bench of Tribunal in the case of **ACIT v Smt. Prem Anand** in **ITA No. 3514/Del/2014** vide order dated **13.04.2017** held that amendment made in section 68 of the Act w.e.f. 01.04.2013 empowers the A.O. to examine source of source in case of share application money / share capital / share premium and thus this amendment does not give power to the A.O. to examine source of source of non-share capital cases.

17. The Hon'ble Allahabad High Court in the case of **PCIT vs. Anshika Consultants (P.) Ltd.** reported in **[2024] 162 taxmann.com 792 (Allahabad)** held as under:-

“Where assessee had received unsecured interest bearing loans from three corporate entities and had furnished necessary acknowledgement of return, balance sheet, profit and loss account, etc., to prove identity, creditworthiness and genuineness of transaction of unsecured loan taken by it, addition under section 68 was not warranted.”

18. In the case of **DCIT vs. Paswara Papers Ltd.** reported in **[2024] 159 taxmann.com 604 (Allahabad)**, the Hon'ble High Court held as under:

“Where assessee received loan from various creditors who sold their old jewellery and gave loan to assessee out of sale consideration, since assessee had disclosed name of jewellers to whom jewellery was sold

and also established mode of payment through banking channel, and moreover existence of deposits made to assessee by creditors was not in dispute, impugned addition under section 68 with respect to loan could not be sustained.”

19. The Hon'ble Delhi High Court in the case of **CIT vs Vrindavan Farms Pvt. Ltd.** in ITA No.71 of 2015 dated 12.08.2015 has held as under:-

"The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the Assessing Officer had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High court."

20. The Hon'ble Delhi High Court in the case of **PCIT vs. Agson Global Pvt. Ltd** reported in **[2022]134 Taxmann.com 256 (Delhi)** while allowing the appeal in favour of the assessee towards the additions made u/s 68 of the Act has held as under:

“Section 68 of the Income-tax Act, 1961 – Cash credits (Share capital money) – Assessment years 2012-13 to 2017-18 – Assessee-company received share capital and share premium money from several investors – Assessing Officer made addition in respect of same on account of unaccounted income under section 68 on basis of recorded statement of managing director of assessee-company – Whether since assessee placed sufficient documentary evidence to establish that money which assessee had paid to investors was routed back to it in form of share capital/share premium and identity, creditworthiness and genuineness of investors was proved, there was no justification to make addition under section 68 – Held, yes [Paras 11.4, 11.5 and 14.4] [In favour of assessee]”

.....

27. *Regarding surrounding circumstances, it is observed that while making addition u/s 68 of the Act, the AO has doubted the financial capacity of loan creditors but such addition cannot be made on preponderance of probability and there has to be some evidence and substance in contention. The Assessing Officer has not brought anything on record to establish that the sources in the hands of loan creditors is non-genuine. Merely because they have shown meager income or no sufficient sources as presumed by Assessing Officer, loan taken by*

appellant from them cannot be held to be accommodation entries. It is well-settled position of law that no matter how strong suspicion is, it cannot take place of the evidence. Therefore, in the absence of any evidence showing that in fact, appellant has given cash in lieu of unsecured loan taken, merely on the basis of suspicion, no addition can be made for which reliance is placed on decision of Hon'ble Supreme court in the case of Daulatram Rawatmull, (1964) 53 ITR 574.

21. On the issue of discharge the onus of establishing the creditworthiness of the loan creditor, the Hon'ble Delhi High court in the case of **Mod. Creations (P.) Ltd. v. ITO** reported in **[2013] 354 ITR 282**, has held as under:

*"It will have to be kept in mind that Section 68 of the I.T. Act only sets up a presumption against the Assessee whenever unexplained credits are found in the books of accounts of the Assessee. It cannot but be gainsaid that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the Assessee. **This burden, which is placed on the Assessee, shifts as soon as the Assessee establishes the authenticity of transactions as executed between the Assessee and its creditors. It is no part of the Assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the Assessee to prove the creditworthiness of the sub-creditors.***

22. It was further observed by the Hon'ble Court as under:

14. *"With this material on record in our view as far as the Assessee was concerned, it had discharged initial onus placed on it. **In the event the revenue still had a doubt with regard to the genuineness of the transactions in issue, or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it.** A bald assertion by the Assessing Officer that the credits were a circular route adopted by the Assessee to plough back its own undisclosed income into its accounts, can be of no avail. The revenue was required to prove this allegation. **An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation.** The ITAT, in our view, without adverting to the aforementioned principle laid stress on the fact that despite opportunities, the Assessee and/or the creditors had not proved the genuineness of the transaction. Based on this the ITAT construed the intentions of the Assessee as being mala*

Ride. In our view the ITAT ought to have analyzed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the A.O. If the A.O. had any doubt about the material placed on record, which was largely bank statements or the creditors and their income tax returns, it could gather the necessary information from the sources to which the said information was attributable to. No such exercise had been conducted by the A.O. In any event what both the A.O. and the ITAT lost track of was that it was dealing with the assessment of the company, i.e., the recipient of the loan and not that its directors and shareholders or that of the sub-creditors. If it had any doubts with regard to their credit worthiness, the revenue could always bring it to tax in the hands of the creditors and/or sub-creditors.”

23. One more aspect needs to be considered is that the entire loan was repaid during the year itself which includes the opening outstanding balance and the same stands accepted by the AO. Eventually, such repayment of funds by the assessee became the source of funds in the hands of M/s Tejas Handloom for making fresh loan to the assessee. This fact is further established from the funds flow statement prepared for peak balance, as discussed above.

24. The Hon'ble Gujarat High Court in the cases of ***PCIT vs Ojas Tarmake (P).Ltd. [2023] 156 taxmann.com 75, CIT Vs. Ayachi Chandrasekhar Narsangji, 42 Taxmann.com 251 (Guj)*** and ***CIT Vs. Mahavir Crimpers, 95 Taxman.com 323 (Guj)*** held that when the Department has accepted the factum of repayment, the additions under Section 68 is not sustainable in law. Similar view has been expressed by the jurisdictional high court in the case of ***CIT Vs. Karaj Singh (2011) 15 Taxmann.com 70 (P&H)***.

25. In view of the above discussion and considering the fact that the assessee has been able to demonstrate that funds given by M/s Tejas

Handloom are majorly sourced out of the loan repaid by the assessee herself which payment has not been doubted and, therefore, no addition could be made u/s 68 of the Act. Accordingly, we hereby direct the AO to delete the addition of INR 1,56,59,722/- made u/s 68 of the Act. Grounds of appeal Nos. 1 & 2 raised by the assessee are thus allowed.

26. Now coming to **Grounds of appeal Nos.3 & 4** raised by the assessee against the application of G.P. rate of 1.22 % on the gross turnover of the assessee.

27. Before us, Ld. AR of the assessee submits that AO has doubted the books of accounts for two reasons:-

- (i) There were remarks by the Auditor that stock register was not produced for examination thus he has not verified the stock details, if any, maintained by the assessee;
- (ii) AO has tabulated the month-wise purchases and sales and after reducing the amount of G.P. declared, he worked out the month-wise cost of goods sold and computed closing stock on monthly basis. The AO observed that as per this working there was negative stock in the month of July & August therefore, the AO was of the opinion that books of accounts of the assessee are not reliable and he rejected the books of accounts though expressly provision of section 145(3) is not invoked. .

28. Before us, Ld.AR for the assessee submits that without invoking the provision of section 145(3) of the Act, estimation of income is not permissible. Ld.AR submits that AO has made a serious error of fact by applying average rate of G.P. on all the items traded during the year to work out the cost of goods sold. He submits that assessee is dealing into different items which are 92 in number as could be seen from the index of items of stock register placed at pages 186 & 187 of the Paper Book. Ld. AR further submits that G.P. rate cannot be remained static for each and every item traded that too on daily basis, as has been assumed by the AO while working out of monthly position of closing stock for making allegation that there was negative stock. Ld.AR submits that assessee has filed complete copy of stock register containing item-wise quantity of opening stock, purchase made alongwith daily balancing of each individual item traded, consequent sales and daily balance of the quantity available alongwith value thereof. The stock register so submitted before the AO is filed before us at page 40 to 185 of the Paper Book. Ld.AR submits that though all these stock records were not produced before the Auditors however, they were produced before the AO who has failed to point out a single defect in any of the entries contained in the stock register which are further supported by respective purchases and sales bills alongwith quantitative tally. Ld. AR submits that merely on the observations of the Auditor that he has not verified the stock record, trading results cannot be doubted on assumptions and presumptions. With respect to the application of G.P. rate of 1.22 %, Ld.AR submits that assessee is having irregular G.P. rate ranging from 0.62% to 0.13% starting from AYs 2014-15 to 2018-19 i.e. year under appeal and the AO has failed to consider

such variation in the G.P. rate which has not been doubted in any of the preceding year. Ld. AR also stated that turnover of the assessee had increased multi-fold from INR 8.02 crores in FY 2014-15 to INR 308.94 crores in the year under appeal which cannot be achieved without reducing the profit margins. He, therefore, requested that the additions made deserves to be deleted. Reliance is placed on the judgement of Hon'ble Punjab High Court in the case of **Pandit Pros. Vs CIT [1954] 26 ITR 159 (Punjab)** and the decision of Co-ordinate Bench of Delhi Tribunal in the case of **Agson Global P.Ltd. [2020] 115 taxmann.com 342 (Del.Trib.)**.

29. On the other hand, Ld. Sr. DR for the Revenue vehemently supported the orders of lower authorities and submits that assessee has failed to controvert the findings of AO before Ld. CIT(A) or at this stage before us. He submits that AO has worked out the monthly position of stock based on the figures supplied by the assessee and therefore, he requested to confirm the additions so made.

30. Heard the contentions of both parties and perused the material available on record. In the instant case, allegation of the Revenue is that assessee is not maintaining proper stock records and as per the AO, there was negative stock in two months whereas claim of the assessee is that day to day stock register was maintained and submitted before the lower authorities for verification however, the same was ignored while rejecting the books of accounts and profits were estimated.

31. On perusal of the facts and circumstances of the case and stock records filed in the paper book, we find that assessee was maintaining day to day stock register containing inward and outward of goods on daily basis and the AO has failed to point out any specific defect in any of the entries contained therein. From the perusal of chart as provided at page 8 of the assessment order where the AO has worked out the deficiency of stock in two months, we find that AO has calculated the stock position in terms of value and has failed to point out any error in the quantitative tally submitted by the assessee. The value of each item traded may differ and cannot be taken as basis for computing the stock position more particularly when the quantitative details are available. Further value of each item depends upon the G.P. rate of each individual item however, it would not impact the day to day quantity traded by the assessee which fact has been ignored by the assessee. From the perusal of the stock inventory available in the paper book filed by the assessee, we find that there was no deficiency in quantitative terms therefore, we are not in agreement with the observations of the AO that the books of accounts of the assessee does not depict true & fair view of the transaction carried out by the assessee.

32. The Hon'ble Kerala High Court in the case **St. Teresa's Oil Mills vs State of Kerala [1970] 76 ITR 365** has held as under:-

“Accounts regularly maintained in the course of business have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. The Department has to prove satisfactorily that the account books are unreliable, incorrect or incomplete before it can reject the accounts. The rejection of accounts is not a matter to be done light-heartedly, though it may not be possible to lay down in general terms the exact circumstances in which the accounts should be considered as unreliable or incorrect. The

accounts could be rejected as unreliable if important transactions are omitted therefrom or if proper particulars and vouchers are not forthcoming or if they do not include entries relating to one particular class of business. In this connection, it has to be pointed out that the rejection of accounts and assessment to the best of judgment are two distinct and separate processes and should not be confused as one, although there will be overlapping in the materials used for applying both processes. The initial step of rejecting the accounts will be justified when the account books are found for valid reasons unreliable, incorrect or incomplete. The assessee at this stage has to be given reasonable opportunity for offering explanations regarding the defects in the accounts and on his failure to satisfactorily explain the defects, the Department will be justified in rejecting the accounts. The subsequent step of assessment to the best of judgment, involves some guesswork and necessarily has to be done on the materials available in each case. In the instant case the only circumstance relied on by the authorities below for the rejection of the accounts is that there was wide disparity in the consumption of electricity. This factor by itself without any other supporting circumstance does not justify the rejection of the accounts. Such variation in the consumption of electricity can be due to various factors outside the control of the assessee. It is unsafe to categorically say that because there is variation in the consumption of electricity the accounts are incorrect or unreliable. The efficiency of the crushing machine as also the moisture content in the copra would also be relevant factors to be taken into account in arriving at the output. It is, therefore, unsafe to uphold the rejection of the accounts purely on the ground that there has been divergence in the consumption of electricity.”

33. It is further seen that assessee has traded in different type of products which are more than 92 products and it is settled proposition that the G.P. rate cannot remain static for different item. This fact is also ignored by the AO while doubting the trading results. When the assessee has successfully demonstrated that it had no negative stock on daily basis in terms of the quantity, allegation of the AO of deficiency in stock cannot be accepted. Besides this, the AO has not identified any specific instance defect in the books of accounts maintained by the assessee nor in the stock records. Therefore, we do not find any reason to disbelieve the books of accounts maintained by the assessee in regular course which are duly audited by the statutory Auditors. Therefore, we hold that the

books of accounts of the assessee cannot be rejected by invoking the provision of section 145(3) of the Act.

34. With respect to the application of G.P. rate of 1.22%, we find that the AO has applied G.P. rate of immediately preceding year where the turnover of the assessee was of INR 40.87 crores as compared to INR 308.94 crores in the year under appeal. It is the settled principle of business that higher turnover could be achieved by lowering the profit margins. In the instant case, turnover of the assessee increased multi-fold which fact cannot be ignored by estimating the income.

35. Looking to the entirety of the facts and circumstances of the case and further considering that we have already held that provisions of section 145(3) cannot be invoked in the present case, G.P. rate declared by the assessee cannot be disturbed. Accordingly, the addition made by applying G.P rate of 1.22% is hereby, deleted. Grounds of appeal No. 3 & 4 raised by the assessee are allowed.

36. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 19.12.2025.

Sd/-

**(SUDHIR KUMAR)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Date:- 19.12.2025

Amit Kumar, Sr.P.S

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4. CIT(Appeals)
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ITAT, NEW DELHI